

Judge Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES DAVID BRAILEY, JR.,

Defendant.

No. CR 03-5136 RJB

**GOVERNMENT'S
SENTENCING
MEMORANDUM**

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Andrew R. Hamilton and John J. Lulejian, Assistant United States Attorneys for said District, respectfully submit this Sentencing Memorandum on behalf of the Government.

Defendant James David Brailey, Jr. (Brailey) has pleaded guilty to Count One of the Superseding Indictment, which charges possession of a firearm and ammunition by a person convicted of a misdemeanor crime of domestic violence, a violation of Title 18, United States Code, Sections 922(g)(9). Sentencing in this case is scheduled for Friday, December 5, 2003, at 1:30 p.m.

I. BACKGROUND

On June 15, 1993, police officers were dispatched to Brailey's residence in Park City, Utah, after receiving a complaint that a woman was being beaten. When the officers arrived at Brailey's residence, they heard evidence of a struggle, a male voice threatening to kill the victim and a woman choking and begging, "Please don't hurt me any more." When the officers entered the residence, they found Brailey's wife battered and bleeding on the floor. Brailey's wife had difficulty speaking and indicated that Brailey had forced his fingers down her throat, effectively cutting off her air supply. The officers noticed that Brailey's wife's face was red and beginning to swell, her left eye had started to blacken and there was blood on her lip. The officers arrested Brailey and seized two firearms from him including an Hammerli and Interarms Industries .44 Magnum revolver, the same weapon Brailey has been charged with possessing in this matter.

Brailey was originally charged in an information by the State of Utah with a first degree felony charge of Forcible Sodomy and a class B misdemeanor charge of Assault (Spouse Abuse). On September 20, 1993, Brailey plead guilty to an information charging him with a third degree felony charge of Aggravated Assault. On October 25, 1993, Brailey was sentenced to thirty-six months probation, a five hundred dollar fine and one hundred hours of community service. After the completion of probation on May 29, 1997, Brailey's felony conviction of Aggravated Assault was reduced to a class A misdemeanor.

In March 2001, Brailey came to the attention of the Federal Bureau of Investigation (FBI). The FBI learned from a confidential informant that Brailey was a member of the Jural Society, a group of individuals who do not believe in state or federal government, but instead believe in and support a "people's government" based upon Christian principles and common law.¹ According to the confidential informant, in

¹ According to one Jural Society website,

The Jural Society is the ultimate civil authority of the county and wields the same power as the county board of supervisors, and much more. The Jural

1 October 1998, Brailey was elected the Governor of the State of Washington at one of the
 2 Jural Society's periodic elections. What concerned the FBI was the confidential
 3 informant's report that Brailey planned to assassinate Governor Gary Locke. According
 4 to the confidential informant, Brailey's hatred of Governor Locke was because of the
 5 governor's ethnicity and Brailey's belief that he was the only true governor of the State of
 6 Washington.

7 The FBI learned from the confidential informant that after his election as governor
 8 in 1998, Brailey entered the Capitol Building in Olympia carrying numerous weapons,
 9 including a rifle under his coat, a .45 caliber pistol in his waist-band, and a .38 revolver
 10 on his ankle. The confidential informant reported that the purpose of this visit was for a
 11 "dry run" to determine whether he could enter the Capitol Building without detection, in
 12 preparation of his plan to assassinate Governor Locke. According to the confidential
 13 informant, Brailey was able to enter the Capitol Building without detection, and saw
 14 Governor Locke at a distance. The confidential informant also reported that Brailey made
 15 several other "dry runs" to the Capitol Building without any weapons which he said were
 16 for the purpose of reconnaissance.

18 Society is a Christian organization, based on Biblical principals, common law
 19 and the Constitutions, State and National. The Jural Society is comprised of
 20 three parts, first, it is the county Grand Jury in a de jure venue and jurisdiction,
 21 separate of the current de facto government, second, the Jural Society maintains
 22 an Assise Court for those who wish to avoid being judged by the ungodly and
 23 unbelievers, third, the Jural Society is the civil authority and handles all
 24 necessary, day-to-day business within the county as is needed to provide services
 25 to the county public at large. Its elected officers are sent as delegates to the State
 26 Jural Society to represent their county. At the county level, it has the descetion
 27 [sic] to maintain any action to protect the county for the people, as the people
 28 dictate in their local Jural Society to acquire the above mentioned services and
 the needs of the people as they may desire.

* * *

The Jural Society officers must be elected by the Electors of the county that are
 not members of the Jural Society. All ballots cast by Electors will not be done in
 secret as Satan would have it, but by open and public elections. This must be
 done to have a Republican Form of Government and to establish the Jural
 Society as a legitimate body politic, de jure.

<http://law.jeffotto.com/> (visited May 18, 2003).

1 The FBI also learned from various intelligence agencies in Washington that in July
 2 2001, the Jural Society voted Brailey out of office because of his increasingly violent
 3 tendencies. Despite being thrown out of office, Brailey continued to meet with
 4 individuals associated with the Jural Society. He also communicated with members of
 5 various Christian Identity groups through the United States.²

6 To corroborate this information, in 2002, the FBI used a second confidential
 7 informant, Clayton Means.³ After the two men became acquainted, in November 2002,
 8 Brailey told Means that he enjoyed hunting deer with a .44 magnum revolver and a 30-30
 9 caliber rifle, and that he had several single action revolvers. In December 2002, Brailey
 10 showed Means two weapons that he kept at his home: a nine millimeter submachine gun
 11 and an assault rifle. According to Means, Brailey stated that he always carries guns with
 12 him and hides them in pouches under the seats of his vehicles. He further told Means that
 13
 14

15 ² According to one court that confronted this group,

16 Christian Identity followers believe in a literal interpretation of the King James
 17 Bible, including celebration of feast days. They believe that Adam is the father
 18 of the white/Aryan race, and that the Canaanite Jew is a descendent of Satan and
 19 the natural enemy of the Aryan. They also believe that God's (Yahweh's)
 20 purpose is for the Aryan race to dominate the earth and the mission of Jews is to
 21 destroy the culture, race, and history of the Aryan. Christian Identity follows
 22 practice separation of the races, as well as dietary and religious laws (including
 23 execution of homosexuals) as outlined in the Bible. A literal hell is taught, and
 24 universal salvation is rejected. They further believe that the mainstream
 25 Christian Church is a cult and has bastardized God's word and the Bible. The
 26 Aryan Nations is the political arm of the Church.

27 Rooks v. Zavares, No. Civ.A. 99-B-631, 2001 WL 34047959, at *1 (D. Colo. Jan. 25,
 28 2001); see also Stefanow v. McFadden, 103 F.3d 1466, 1469 (9th Cir. 1996) ("The Christian
 Identity religion teaches that white Aryans are the true Israelites and that the promises of the
 Bible apply to white Aryans, not to Jews."); Laura Leets, "Responses to Internet Hate Sites:
 Is Speech Too Free In Cyberspace?," 6 Comm. L. & Pol'y 287, 293-94 (2001) (footnotes
 omitted) ("Christian Identity Movement, casts the racial struggle as pseudo-theological. Here
 racism is a battle in which the Bible mandates hate as the will of God. . . . Modern Jews
 originated from a union between Eve and the Serpent in the Garden of Eden, hence Jews are
 falsely argued to be descendants of the devil. All nonwhites are referred to as 'mud people,'
 people without souls, like animals. The movement desires white separatism. Some of the
 more militant groups advocate violence, hoping to take back "white" territory worldwide.").

³ Mr. Means has been an FBI informant for several years in other cases and has
 provided reliable and true information to the FBI in these cases.

1 he knew it was illegal for him to possess a firearm because of his domestic violence
2 conviction in Utah.

3 On December 31, 2002, Brailey and Means traveled to Arkansas in Brailey's van
4 to attend a Christian Identity group meeting. According to Means, Brailey was carrying a
5 .44 magnum revolver and a .380 semiautomatic handgun in the van. At the end of this
6 trip as Brailey was driving back to Washington, Brailey confided to Means about his "dry
7 run" to the Capitol Building with firearms. Means stated to the FBI that Brailey told him
8 that even though he saw Governor Locke on that occasion, Brailey determined that the
9 time was not right for the shooting. Means stated that Brailey stated that he still planned
10 to carry out his plan to assassinate Governor Locke, but at that time had not determined
11 the appropriate time frame.

12 In early January 2003, law enforcement agents, including representatives of the
13 FBI, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the
14 Washington State Patrol, learned that Brailey and Means would be returning to
15 Washington from their Arkansas trip. On January 15, 2003, the agents stopped Brailey at
16 the Cascades Peaks RV resort near Randle, Washington, and executed a federal search
17 warrant on the van in which Brailey was traveling. During the search, the agents
18 discovered a loaded Colt .380 caliber semi-automatic pistol, serial number 80677, stuffed
19 in a Crown Royal bag with two loaded magazines in the console of the van immediately
20 adjacent to where Brailey was sitting. The agents also discovered a loaded Hammerli and
21 Interarms Industries .44 Magnum revolver, model Virginian Dragon, serial number
22 S17510, in a holster with dozens of rounds of ammunition and several knives in the back
23 of the van. In addition to the firearms, the agents discovered a number of documents
24 which identified Brailey as a member of the Jural Society and the Governor of
25 Washington.

26 At the same time one group of agents was searching Brailey's van, another group
27 of agents executed federal search warrants on Brailey's residence and a camper-trailer. In
28 Brailey's bedroom closet, the agents discovered a S.W.D. Incorporated 9 mm pistol,

1 model Cobray - 11/NINE mm, serial number 86-0004308. In the pantry adjacent to
 2 Brailey's kitchen, behind a six-pack of beer, the agents discovered China North Industries
 3 7.62 x 39 caliber rifle, model SKS, serial number 1506453.⁴ In the camper behind
 4 Brailey's home, the agents discovered a Ruger .22 caliber revolver, serial number 21-
 5 12936, a Remington Arms Co., .22 caliber rifle, model The Scoremaster 511, and a Sears
 6 Roebuck and Co. (Marlin) 30-30 caliber lever action rifle, model 45, serial number
 7 Y11925.

8 On January 16, 2003, Brailey was charged by complaint with illegally possessing
 9 two firearms. On February 12, 2003, a federal grand jury in the Western District of
 10 Washington returned a one-count Indictment against Brailey. That Indictment charged
 11 Brailey with the possession of two firearms by a prohibited person, in violation of Title
 12 18, United States Code, Section 922(g)(9). On March 12, 2003, the grand jury returned a
 13 Superseding Indictment containing the same charge, but identified seven firearms in
 14 Brailey's possession.

15 Following the return of the Superseding Indictment, Brailey moved to dismiss the
 16 Superseding Indictment on the basis that his right to bear arms in Utah had been restored.
 17 However, the Court denied Brailey's motion. Consequently, on June 2, 2003, Brailey
 18 pleaded guilty to the one count Superseding Indictment. However, as part of his plea
 19 agreement, Brailey reserved the right to appeal the Court's denials of Defendant's Motion
 20 to Dismiss the Superseding Indictment.

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 25 ⁴ The China North Industries Corporation ("Norinco"), an import arm of the
 26 People's Republic of China, began manufacturing Sino-Soviet SKS rifles in 1953. See United
 27 States v. Lee, 183 F.3d 1029, 1030 (9th Cir. 1999). All models of Norinco firearms are
 28 deemed to be semiautomatic assault weapons. See 18 U.S.C. § 921(a)(30); see also United
States v. O'Malley, 265 F.3d 353, 354 (6th Cir. 2001) ("A semi-automatic assault weapon is
 defined under 18 U.S.C. § 921(a)(30) to include any Norinco model gun."). However,
 because the semiautomatic assault weapon in Brailey's possession was a pre-ban weapon, it is
 not subject to the prohibitions of 18 U.S.C. § 922(v).

II. ACCEPTANCE OF RESPONSIBILITY

The United States recommends a three-level downward adjustment, pursuant to Section 3E1.1(b) of the United States Sentencing Guidelines.

III. GOVERNMENT'S RECOMMENDATION

The United States Probation Office tentatively calculates Brailey's offense level as 17, and his guideline range as 24 to 30 months. The Government agrees with the Probation Office's calculations, and endorses its application of Section 2K2.1(b)(5) of the Sentencing Guidelines.

This section provides that, a four (4) level increase in the Offense Level is appropriate if "a defendant used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense. . . ." According to the United States Court of Appeals for the Ninth Circuit, "'to the extent that the government relies upon physical possession, it must show that the firearm was possessed in a manner that permits an inference that it facilitated or potentially facilitated--i.e., had some potential emboldening role--in a defendant's felonious conduct.'" United States v. Polanco, 93 F.3d 55, 567 (9th Cir. 1996) (quoting United States v. Routon, 25 F.3d 815, 819 (9th Cir. 1994)).

In the instant case, the Government will demonstrate that Brailey possessed the firearms in connection with a conspiracy to shoot Gary Locke, the Governor of Washington. At the sentencing hearing, the Government will call FBI Special Agent James Keesling, who will testify how Clayton Means became a cooperating informant for the FBI, and Clayton Means, who will testify about Brailey's statements to Means concerning the plot to kill Governor Locke.

1 **IV. CONCLUSION**

2 The United States recommends thirty (30) months of imprisonment, three (3) years
3 supervised release with the standard conditions and the enumerated special conditions,
4 and a \$100 special assessment.

5 DATED this 1st day of December, 2003.

6
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CERTIFICATE OF SERVICE

I hereby certify that on _____, 2003, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/Cheryl E. Walkden
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